

**(3:04-cr-223-RJC-2)**

**Respondent.**

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(Doc. No. 39: Order), and the Fourth Circuit dismissed Petitioner's appeal of that order, (Doc. No. 47: Opinion). The Supreme Court subsequently denied Petitioner's request for a writ of certiorari. (Doc. No. 49: Motion at1).

In the instant motion, Petitioner attacks the Court's decision to dismiss his § 2255 action. Thus, the Rule 60(b) motion is simply a successive § 2255 motion attacking the criminal Judgment by which he is incarcerated. United States v. Winestock, 340 F.3d 200, 206-07 (4th Cir. 2003). Therefore, this Court is without jurisdiction to entertain the merits without authorization from the Fourth Circuit.

## **II. DISCUSSION**


Pursuant to 28 U.S.C. § 2244(b)(3)(A), “[b]efore a second or successive application permitted by [Section 2255] is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” See also § 2255(h) (“[a] second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals.”). Petitioner has not shown that he has obtained the necessary permission from the Fourth Circuit to file a successive petition. Accordingly, this petition must be dismissed. See Burton v. Stewart, 549 U.S. 147, 153 (2007) (failure of petitioner to obtain authorization to file a second or successive petition deprived the district court of jurisdiction to consider the second or successive petition “in the first place.”); United States v. Dudley, No. 12-7927, 2012 WL 765721, at \*1 (4th Cir. Mar. 1, 2013) (district court obligated to dismiss unauthorized successive § 2255 motion).

### III. CONCLUSION

**IT IS, THEREFORE, ORDERED** that Petitioner's Motion for Relief from Judgment under Fed. R. Civ. P. 60(b), (Doc. No. 49), and his Motion for Entry of Default, (Doc. No. 50) are **DISMISSED**.

**IT IS FURTHER ORDERED** that pursuant to Rule 11(a) of the Rules Governing Section 2255 Cases, this Court declines to issue a certificate of appealability as Petitioner has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 474, 484 (2000) (holding that when relief is denied on procedural grounds, a petitioner must establish both that the correctness of the dispositive procedural ruling is debatable and that the petition states a debatably valid claim of the denial of a constitutional right).

Signed: April 29, 2013

  
Robert J. Conrad, Jr.  
Chief United States District Judge

